

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Team # 2	CCRB Case #: 201301642	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/13/2013 5:18 PM	Location of Incident: East 205th Street and Jerome Avenue; 52nd Precinct stationhouse.	Precinct: 52	18 Mo. SOL 8/13/2014	EO SOL 8/13/2014	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/13/2013 4:22 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brandon Gembecki	01517	949015	052 PCT
2. SGT Scott Burton	00728	920063	052 PCT
3. POM Reginald Smith	04968	939807	052 PCT
4. Officers			052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dimitri Gunter	08724	949069	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brandon Gembecki	Force: At East 205th Street and Jerome Avenue in the Bronx, PO Brandon Gembecki used a chokehold against § 87(2)(b)	
B.POM Reginald Smith	Force: At East 205th Street and Jerome Avenue in the Bronx, PO Reginald Smith used physical force against § 87(2)(b)	
C.SGT Scott Burton	Abuse: At East 205th Street and Jerome Avenue in the Bronx, Sgt. Scott Burton threatened § 87(2)(b) with the use of force.	
D. Officers	Abuse: At East 205th Street and Jerome Avenue in the Bronx, officers searched the car in which § 87(2)(b) was an occupant.	
E.POM Reginald Smith	Abuse: At the 52nd Precinct stationhouse, PO Reginald Smith threatened § 87(2)(b) with the use of force.	

### Case Summary

On February 15, 2013, Sgt. Eric Sedeniussen of the 52<sup>nd</sup> Precinct reported this complaint via phone to the Internal Affairs Bureau, generating log #13-6967 (encl. C1-C2). This complaint was received at the CCRB on February 13, 2013 (encl. D1-D2). After § 87(2)(b) missed two appointments, the Board closed this case on June 6, 2013, as complainant uncooperative. § 87(2)(b) wrote a letter on April 3, 2014, requesting that his case be re-opened (encl. E1).

On February 13, 2013, at approximately 5:18 p.m., in the vicinity of East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, § 87(2)(b) was arrested. The following allegations resulted:

- **Allegation A: Force – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, PO Brandon Gembecki used a chokehold against § 87(2)(b)**
- **Allegation B: Force – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, PO Reginald Smith used physical force against § 87(2)(b)**
- **Allegation E: Abuse of Authority – At the 52<sup>nd</sup> Precinct stationhouse, PO Reginald Smith threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

- **Allegation C: Abuse of Authority – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, Sgt. Scott Burton threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

- **Allegation D: Abuse of Authority – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, officers searched the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

On April 15, 2014, § 87(2)(b) case was re-opened and assigned to Investigator Krista Kano. On April 30, 2014, this case was re-assigned to Investigator Lauren Kerstein. This case was unsuitable for mediation.

### Results of Investigation

#### Civilian Statements

##### **Complainant:** § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

#### Injury Photos

§ 87(2)(b) provided photos he had taken of his injuries on February 14, 2013, a few hours after he was released from police custody. The photos show slight redness to his right cheek and left and right forearms. When § 87(2)(b) came for his CCRB interview, photos were taken of two scars that § 87(2)(b) allegedly sustained during this incident. One was on the back right side of his neck and the other was on his right wrist (encl. G1-G7).

## CCRB Statement

§ 87(2)(b) provided a phone statement to the CCRB on April 15, 2013 (encl. F1), and an in-person statement on May 13, 2014 (encl. F2-F8). § 87(2)(g)

On February 13, 2013, at approximately 5:18 p.m., § 87(2)(b) was driving northbound on Jerome Avenue in his silver SXT Dodge Charger from his grandmother's house located on § 87(2)(b).

A few seconds later, a marked police vehicle activated its' turret lights between East 204<sup>th</sup> Street and East 205<sup>th</sup> Street on Jerome Avenue and § 87(2)(b) pulled his vehicle over.

PO Brandon Gembecki, the operator of the vehicle, approached § 87(2)(b) driver's side window. PO Dimitri Gunter, the passenger of the vehicle, approached the passenger side. PO Gembecki, who § 87(2)(b) identified by name, was described as a 25-year-old uniformed white man, 5'7" to 5'8" tall, 220 to 240 pounds with short black hair. § 87(2)(b) described PO Gunter, identified via investigation, as a beige-complexioned uniformed man in his late 20s, 5'6" to 5'7" tall, 160 pounds, with short black hair.

PO Gembecki asked § 87(2)(b) twice for his license and registration and § 87(2)(b) asked PO Gembecki why he was stopped. PO Gembecki then asked § 87(2)(b) twice to exit his vehicle and § 87(2)(b) again asked PO Gembecki why he was stopped. PO Gunter walked over to the driver's side of the vehicle, PO Gembecki opened § 87(2)(b) door and both officers proceeded to try and pull § 87(2)(b) out of the vehicle.

§ 87(2)(b) locked his left arm around his steering wheel and PO Gembecki grabbed his left arm and pulled on it repeatedly for about a minute. PO Gunter tried to get § 87(2)(b) out of his vehicle by pulling on his right shoulder with his hand which caused PO Gunter to break the skin on the back of § 87(2)(b) neck. § 87(2)(b) still has the scar caused by PO Gunter.

§ 87(2)(b) left hand was free, so he leaned to the left side of the car and reached for his cellphone by the cup holders so he could call his mother. PO Gembecki hit § 87(2)(b) right wrist with his fist and his cellphone fell onto the floor of the car. PO Gembecki climbed onto § 87(2)(b) who was leaning his body back between the front two seats, and proceeded to choke him for thirty seconds. After a few seconds, § 87(2)(b) started to have trouble breathing so he whispered to PO Gembecki that he would provide his license. PO Gembecki continued choking § 87(2)(b) for fifteen seconds longer before letting go of his neck.

Sgt. Scott Burton and PO Reginald Smith arrived on scene in an unmarked vehicle. § 87(2)(b) described Sgt. Burton, identified via investigation, as a white man in plainclothes, 5'10" to 5'11" tall, 250 pounds with black hair. PO Smith, who § 87(2)(b) identified by his shield number, was described as a black man in his 30s, in plainclothes, 5'10" tall, 220 pounds, with a mole on the upper left side of his face.

PO Smith opened the passenger side door and punched § 87(2)(b) below his right eye. PO Smith then went over to the driver's side of the vehicle where PO Gembecki, PO Gunter and Sgt. Burton stood. PO Gembecki, PO Smith and PO Gunter held § 87(2)(b) arms behind his back. The officers repeatedly told § 87(2)(b) to put his hands behind his back, while Sgt. Burton threatened to spray him with pepper spray. Every time § 87(2)(b) told the officers that his hands were already behind his back, PO Smith would punch him in the back of the head. § 87(2)(b) estimated that PO Smith punched him in the back of the head seven to nine times. § 87(2)(b) was then handcuffed.

PO Gembecki, PO Gunter, PO Smith and Sgt. Burton picked § 87(2)(b) up by his arms and legs and placed him in the back of a police vehicle.

After § 87(2)(b) was out of the vehicle, officers recovered marijuana and a knife from his center console. § 87(2)(b) denied ever reaching or trying to open the center console in his car.

There were approximately twenty onlookers watching § 87(2)(b) get arrested. None of them tried to interfere in his arrest.

In the prisoner holding pen at the 52<sup>nd</sup> Precinct, while PO Smith was fingerprinting § 87(2)(b) another prisoner, § 87(2)(b) began to tell PO Smith that he had previously filed a CCRB complaint against him. § 87(2)(b) described § 87(2)(b) identified via investigation, as a young Hispanic man. PO Smith responded, "I could kill you with my bare hands. Do you want to fight one on one?" No other police officers were around during this interaction with PO Smith.

On February 14, 2014, § 87(2)(b) was transported to Bronx Central Booking and treated by medical personnel for swelling to his head. Later, while being processed at Central Booking, § 87(2)(b) felt dizzy and almost fell over, which he claimed was from when the officers were on his back inside the car. NYC Department of Correction refused to take § 87(2)(b) so he was transported to § 87(2)(b) in the Bronx.

§ 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50. § 87(2)(b) also received three summonses for § 87(2)(b), § 87(2)(a) 160.50. When § 87(2)(b) car was returned to him, his car tires were slashed. This allegation was referred to the Office of the Chief of Department.

**Witness:** § 87(2)(b)

Contact was established with § 87(2)(b) on June 24, 2014. § 87(2)(b) did not remember any details of this incident.

**NYPD Statements:**

**Subject Officer: PO BRANDON GEMBECKI**

- PO Gembecki is a § 87(2)(b)
- On February 23, 2013, PO Gembecki worked from 3 p.m. to 11:35 p.m., assigned to patrol sectors M, N, P, and Q within the confines of the 52<sup>nd</sup> Precinct. PO Gembecki worked with PO Dimitri Gunter in uniform in marked vehicle #3358.

**Arrest Report and Complaint Report**

At time and place of occurrence, defendant was observed double parked on a fire hydrant causing vehicles behind him to stop and change lanes. When the arresting officer stopped defendant, he refused to present a valid driver's license after being asked multiple times. When asked to exit the vehicle, defendant refused and became aggressive. Three summonses were issued and defendant was in possession of a gravity knife (encl. I1-I5).

**Memo book:**

5:10 p.m., observed a gray Dodge double parked on § 87(2)(b) on a hydrant. Attempted to do a vehicle stop, subject was swerving in and out of traffic. Refused to give ID, said "Fuck you nigga, tell me what I did. I'm not giving you shit." Resisted A/O and would not get out of vehicle (encl. H1-H4).

**CCRB Statement**

PO Gembecki provided a statement to the CCRB on June 5, 2014 (encl. K1-K3).

On February 23, 2013, at approximately 5:10 p.m., PO Gembecki observed an unoccupied vehicle double parked, obstructing a fire hydrant and blocking vehicular traffic in the right lane. PO

Gembecki and PO Gunter made a U-turn in order to stop the vehicle when PO Gembecki observed § 87(2)(b) exit a building and enter the car.

§ 87(2)(b) headed northbound on Jerome Avenue and was swerving in and out of traffic at 40 mph in a 30 mph zone. PO Gembecki initiated the traffic stop by flashing his lights and sirens. It took § 87(2)(b) three to four blocks to finally stop on the side of Jerome Avenue and when he did so, he failed to use his blinker.

Upon approach of the vehicle, PO Gembecki smelled an odor of marijuana emanating from § 87(2)(b) vehicle. PO Gembecki approached the driver's side of the vehicle; PO Gunter approached the passenger side of the vehicle.

PO Gembecki asked § 87(2)(b) for his license, registration and insurance. § 87(2)(b) responded, "Fuck you nigga. Tell me what I did wrong. I'm not going to give you shit." § 87(2)(b) appeared very angry and kept clenching his fists. After asking § 87(2)(b) three to four more times for his information and § 87(2)(b) refusing to provide it, PO Gembecki twice requested that § 87(2)(b) step out of the vehicle. § 87(2)(b) refused.

PO Gembecki opened the front driver's side door of the vehicle and again requested that § 87(2)(b) exit the vehicle. § 87(2)(b) stated, "No, I'm not getting out of the car. I did not do anything wrong." PO Gembecki reached inside the vehicle and put § 87(2)(b) car in park because he was concerned that § 87(2)(b) would drive away or try and run himself or PO Gunter over. While PO Gembecki was attempting to place the car in park, § 87(2)(b) kept trying to swat his hand away and began to curse and yell at PO Gembecki.

§ 87(2)(b) began reaching for the glove box and center console which were both closed at the time. PO Gembecki could not recall which one he reached for first. PO Gembecki pushed § 87(2)(b) chest against the seat and grabbed § 87(2)(b) arms to stop him from continuing to reach for the glove box and center console because PO Gembecki believed that he was reaching for a weapon.

PO Gunter requested another police unit to come to the scene via radio transmission and walked over to the driver's side in order to assist PO Gembecki in arresting § 87(2)(b). Each time PO Gembecki would try and get § 87(2)(b) out of the car, § 87(2)(b) would push his hands away and tense up his body.

Within a minute, Sgt. Burton and PO Smith arrived on scene and assisted in trying to get § 87(2)(b) out of his vehicle. PO Smith grabbed § 87(2)(b) feet and legs from the driver's side. Sgt. Burton was on the passenger side of the vehicle and had his pepper spray out. PO Gembecki could not recall if Sgt. Burton was pointing it at § 87(2)(b) but stated that Sgt. Burton never verbally threatened to use his pepper spray. PO Gembecki never punched or choked § 87(2)(b) or observed any other officer do so.

After Sgt. Burton and PO Smith arrived, it took approximately a minute for all the officers to get § 87(2)(b) out of the vehicle. As § 87(2)(b) was being taken out of his vehicle, PO Gembecki observed a small red knife on the driver's seat that had fallen from somewhere on § 87(2)(b) body.

§ 87(2)(b) was placed on his knees and continued flailing his arms while pushing the officers' hands away and clenching his body. PO Gembecki grabbed § 87(2)(b) arms and placed them behind his back and handcuffed him.

Before § 87(2)(b) car could be driven back to the precinct, PO Gembecki conducted a search of the lunge-able and grab-able areas inside the car for officer safety. PO Gembecki searched the center console, the glove box and underneath the driver's seat. A bag of marijuana was recovered from the center console.

While at the 52<sup>nd</sup> Precinct, PO Gembecki did not observe any interaction between PO Smith and § 87(2)(b) and never heard PO Smith threaten to kill or fight § 87(2)(b). § 87(2)(b)

§ 87(2)(b) never complained of any injuries and PO Gembecki never observed any injuries on § 87(2)(b)

**Witness Officer: PO DIMITRI GUNTER**

- *PO Gunter is a § 87(2)(b)*
- *On February 13, 2013, PO Gunter worked from 3 p.m. to 12 a.m. assigned to sector patrol within the confines of the 52<sup>nd</sup> Precinct with PO Gembecki. PO Gunter was in uniform and assigned to marked vehicle # 3357.*

**Memo book**

5:10 p.m., observed gray Dodge Charger with NY plate § 87(2)(b) double parked, unattended and on a fire hydrant on § 87(2)(b). Attempted to do a vehicle stop, vehicle swerving in and out of traffic. Defendant refused to give ID, said “F-U I’m not going to give you shit.” Was asked on multiple occasions to exit vehicle and would not get out. Defendant resisted. 5:18 p.m., One under at location § 87(2)(b) information. Summons by PO Gembecki. 15:25 p.m., 10-84 at 52<sup>nd</sup> Precinct (encl. L1-L4).

**CCRB Statement**

PO Gunter provided a statement to the CCRB on June 23, 2014. § 87(2)(g)

(encl. L6-L8).

PO Gunter could not recall whether he smelled marijuana upon approaching the vehicle. PO Gembecki requested § 87(2)(b) ID multiple times. § 87(2)(b) refused and responded, “Fuck you. I’m not giving you shit.” PO Gembecki asked § 87(2)(b) to exit the vehicle. § 87(2)(b) began to reach for the center console of the car. PO Gunter thought § 87(2)(b) was reaching for a weapon.

PO Gembecki leaned into the front seat and stopped § 87(2)(b) from reaching into the center console. PO Gembecki never choked § 87(2)(b)

PO Smith and Sgt. Burton responded to the scene. PO Gunter went to the passenger side of the vehicle and grabbed § 87(2)(b) legs and assisted PO Gembecki in removing § 87(2)(b) from his vehicle. PO Gunter could not recall whether or not PO Smith and Sgt. Burton assisted in taking § 87(2)(b) out of the car. PO Gunter never punched § 87(2)(b) or observed any other officer do so. PO Gunter never heard an officer threaten to use pepper spray on § 87(2)(b) or have his pepper spray out.

PO Gunter and PO Gembecki conducted a car search on the scene. PO Gunter searched the passenger side of the car which included the glove box, the floor, underneath the passenger seat and the side of the passenger seat.

PO Gunter returned to the stationhouse after § 87(2)(b) arrest. PO Gunter never heard PO Smith or any other officer threaten to kill or fight § 87(2)(b)

**Subject Officer: SGT. SCOTT BURTON**

- *Sgt. Burton is a § 87(2)(b)*
- *On February 13, 2013, Sgt. Burton worked in plainclothes from 2 p.m. to 10:44 p.m. assigned to Anti-Crime with PO Reginald Smith in unmarked vehicle #254.*

**Memo book**

5:10 p.m., 10-85 Sector M, East 205<sup>th</sup> Street and Jerome Avenue. 5:25 p.m., Sector M one under for § 87(2)(b), § 87(2)(a) 160.50 (encl. O1-O2).

**Subject Officer: PO REGINALD SMITH**

- PO Smith is a § 87(2)(b)
- On February 13, 2013, PO Smith worked from 2 p.m. to 10:35 p.m., in an unmarked vehicle and plainclothes on an Anti-Crime team.

**Memo book**

PO Smith lost his memo book (encl. W6).

**CCRB Statements**

Sgt. Burton was interviewed at the CCRB on May 29, 2014 and PO Smith was interviewed on June 25, 2014. § 87(2)(g) (encl. O4-O5, N5-N6)

Sgt. Burton and PO Smith responded to the scene. Sgt. Burton and PO Smith saw PO Gembecki trying to grab § 87(2)(b) arms in order to get him out of his vehicle. § 87(2)(b) kept moving his hands away and refused to exit his vehicle. Sgt. Burton and PO Smith exited their vehicle and Sgt. Burton went on the passenger side to assist PO Gembecki but by the time he made it to the passenger side of the car, PO Gunter and PO Gembecki had already gotten § 87(2)(b) out of the car. Sgt. Burton and PO Smith left the scene.

PO Smith never punched § 87(2)(b) and Sgt. Burton and PO Smith never observed another officer do so. PO Smith and Sgt. Burton never saw PO Gembecki choke § 87(2)(b). Sgt. Burton could not recall whether he threatened to use pepper spray on § 87(2)(b). PO Smith never heard Sgt. Burton threaten to use pepper spray on § 87(2)(b). PO Smith never threatened to kill or fight § 87(2)(b) and Sgt. Burton never heard PO Smith threaten to kill or fight § 87(2)(b).

**Medical Records**

**Statement to Medical Personnel**

§ 87(2)(b) was taken to § 87(2)(b) on February 14, 2013, by PO Vincent Catalano from the 52nd Precinct. § 87(2)(b) complained of pain to the left side of his head, wrists and lower back which he stated resulted from a scuffle with police.

**Diagnosis**

Medical personnel found no visible injuries on § 87(2)(b).

**Medical Treatment**

They prescribed him Tylenol and discharged him back into police custody.

**NYPD Documents**

**Command Log**

§ 87(2)(b) condition was listed as apparently normal (encl. Q1).

**Prisoner Holding Pen Roster**

§ 87(2)(b) was guarded by PO Gembecki in the prisoner holding pen from 6 p.m. to midnight. PO Smith guarded § 87(2)(b) from 7 p.m. to midnight (encl. R1).

**Property Vouchers**

§ 87(2)(b) was in possession of \$867, one red knife and one bag of marijuana (encl. S1-S6).

### Arrest for Incident and Disposition

- All criminal charges in connection with this incident have been sealed.

### Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of May 22, 2014, one year after the 90-day filing requirement, with regard to the incident (encl. T4).

### Civilian Criminal History

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian CCRB History

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Subject Officers CCRB History

- PO Smith has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. B2-B3).
- PO Gembecki has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. B1).
- Sgt. Burton has been a member of service for sixteen years and there are no substantiated CCRB allegations against him (encl. B4).

### Conclusion

#### Identification of Subject Officers

PO Gembecki and Sgt. Burton acknowledged their interaction with § 87(2)(b). § 87(2)(b) alleged that an officer, who he had previously filed a CCRB complaint against, threatened to use excessive force and then used excessive force against him. PO Smith acknowledged being present on the scene and he is the only officer of those who arrived, who § 87(2)(b) had previously filed a CCRB complaint against.

### Investigative Findings and Recommendations

**Allegation A: Force – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, PO Brandon Gembecki used a chokehold against § 87(2)(b)**

**Allegation B: Force – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, PO Reginald Smith used physical force against § 87(2)(b)**

**Allegation E: Abuse of Authority – At the 52nd Precinct stationhouse, PO Reginald Smith threatened § 87(2)(b) with the use of force.**

At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, § 87(2)(b) alleged that after he refused to exit his vehicle, PO Gembecki repeatedly pulled on his arms and PO Gunter pulled on his shoulder in attempt to remove him from his vehicle. § 87(2)(b) also alleged that PO Gembecki



choked him for thirty seconds and that PO Smith punched him in the back of the head several times. After being transported to the 52<sup>nd</sup> Precinct stationhouse, § 87(2)(b) alleged that while PO Smith was fingerprinting § 87(2)(b) PO Smith threatened to fight and kill him.

PO Gembecki denied choking § 87(2)(b) and the only other officer who would have witnessed the alleged chokehold, PO Gunter, also denied that the allegation occurred. PO Smith denied ever physically or verbally interacting with § 87(2)(b) at the scene or the 52<sup>nd</sup> Precinct stationhouse and the officers denied seeing PO Smith punch or threaten § 87(2)(b) with force. Contact was established with § 87(2)(b) who did not recall any details from when he was held at the 52<sup>nd</sup> Precinct stationhouse. Although § 87(2)(b) provided photos of his alleged injuries which he took on February 14, 2013, medical records obtained from § 87(2)(b) for that same day note that medical personnel did not observe any visible injuries on § 87(2)(b).

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**Allegation C: Abuse of Authority – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, Sgt. Scott Burton threatened § 87(2)(b) with the use of force.**

At East 205<sup>th</sup> and Jerome Avenue in the Bronx, § 87(2)(b) alleged that Sgt. Burton threatened to pepper spray him. However, § 87(2)(b) admitted, and his testimony was corroborated by officer statements, that he refused to exit his vehicle and was reaching for a concealed item near the passenger's side of the car, which PO Gembecki and PO Gunter believed to be a weapon.

NYPD Patrol Guide Procedure 212-95 (encl. A1-A4), concerning the use of pepper spray devices, authorizes officers to use pepper spray to “effect an arrest, or establish physical control of a subject resisting arrest.”

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**Allegation D: Abuse of Authority – At East 205<sup>th</sup> Street and Jerome Avenue in the Bronx, officers searched the car in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b) car was searched. § 87(2)(b) acknowledged that officers recovered marijuana and a knife from his center console. PO Gembecki said that he smelled a strong odor of marijuana emanating from § 87(2)(b) car and saw § 87(2)(b) reaching towards the middle console and the glove box. PO Gunter could not recall whether he smelled marijuana but corroborated that § 87(2)(b) was reaching towards the middle console during the physical struggle. After § 87(2)(b) was handcuffed and before the vehicle was driven back to the precinct, PO Gembecki conducted a search of the car for officer safety. PO Gembecki searched the center console, the glove box and underneath the driver's seat. A bag of marijuana was recovered from the center console. PO Gunter searched the passenger side of the car which included the glove box, underneath the passenger seat and the side of the passenger seat.

An officer has probable cause to search a vehicle when the officer detects an odor of marijuana and/or observes marijuana in plain view. People v. Hughes, 890 N.Y.S.2d 121 (1009 2<sup>nd</sup> Dept.) (encl. A5-A6).

§ 87(2)(g)

Team: \_\_\_\_2\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date